

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

PALATIUMCARE, INC.,

Plaintiff, Counterclaim Defendant,

v.

NOTIFY LLC and LUCAS NARBATOVICS,

Defendants, Counterclaim Plaintiffs.

Case No. 2:22-cv-217

**PALATIUMCARE, INC.'S ANSWER TO DEFENDANTS NOTIFY, LLC
AND LUCAS NARBATOVICS' COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant PalatiumCare, Inc. ("PalCare"), by and through its attorneys, replies to Defendants and Counterclaim Plaintiffs Notify, LLC ("Notify") and Lucas Narbatovics' (collectively, "Defendants") Counterclaims against it (Dkt. No. 10), paragraph-by-paragraph, as follows:

DEFENDANTS' COUNTERCLAIMS

1. This is an action for a declaratory judgment that Plaintiff's alleged copyright rights are invalid and that Defendants have not infringed and are not infringing any copyright purportedly owned by Plaintiff, by reason of either Defendant's or both Defendants' creation, sales and/or use of the Notify Zurich product.

ANSWER: PalCare admits that Defendants attempt to state a claim for a declaratory judgment in their Counterclaims. PalCare denies the remaining allegations in Paragraph 1.

2. This Court has jurisdiction over the subject matter of this counterclaim pursuant to the Federal Declaratory Judgment Act, Title 28 United States Code §§ 2201 and 2202, and Title 28 United States Code § 1338.

ANSWER: Paragraph 2 of Defendants' Counterclaims consists of legal assertions for which no response is required. To the extent that Paragraph 2 contains allegations to which a response is required, Plaintiff denies the allegations contained in Paragraph 2.

3. The purported copyright registrations and underlying purported copyright rights related to the Asserted Code are invalid as the Asserted Code lacks the minimum amount of creativity.

ANSWER: Denied.

4. Most of the Asserted Code was not created by (and is not original to) Plaintiff, but was rather sourced by or on behalf of Plaintiff from publicly available sources.

ANSWER: Denied.

5. Upon information and belief, to the extent that any contribution was made by Plaintiff to the Asserted code, such contribution was not sufficiently creative to garner U.S. copyright protection.

ANSWER: Denied.

6. Indeed, upon information and belief, to the extent that any contribution was made by Plaintiff to the Asserted code, such contribution was merely useful and not entitled to copyright protection.

ANSWER: Denied.

7. Neither Defendant factually copied the Asserted Code.

ANSWER: Denied.

8. Neither Defendant wrongfully copied the Asserted Code.

ANSWER: Denied.

9. On information and belief, Plaintiff's copyrights on the Asserted Code do not prevent the creation, sales and/or use of the Notify Zurich product. The Zurich product makes fair and permissible use of independently created source code.

ANSWER: Denied.

10. Plaintiff's filing of this suit has created an actual, substantial and judicable controversy between Plaintiff and Defendants concerning rights related to creation, sales and/or use of the Notify Zurich product and similar software.

ANSWER: PalCare admits that there is an actual and justiciable controversy between PalCare and Defendants concerning Notify's Zurich product and similar software products. PalCare denies the remaining allegations in Paragraph 10.

11. Upon information and belief, based on certified copies of the Asserted Code from the U.S. Copyright Office, the Asserted Code comprises 98,344 lines of source code (only about 5,000 lines of which were deposited and are available from the Copyright Office (the “Code Deposits”) written in the Python coding language, including about 30,000 lines of what appear to be media access control (MAC) addresses.

ANSWER: Denied.

12. Upon information and belief, Plaintiff does not own any aspect of the Python coding language.

ANSWER: PalCare admits that it does not own the Python coding language. PalCare otherwise denies the allegations in Paragraph 12.

13. Notify’s source code used in the creation, sales, testing and/or use of the Notify Zurich product consists of more than 1700 python source code files written in the Python coding language (“Zurich Code”).

ANSWER: PalCare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and, on that basis, denies those allegations.

14. More than 160 randomly selected MAC addresses were selected from the Asserted Code and compared to all files from the Zurich Code; none were located in the Zurich Code.

ANSWER: PalCare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 and, on that basis, denies those allegations.

15. Additionally, from the Code Deposits, more than 100 additional random text strings, in addition to the MAC addresses, were selected and compared to the Zurich Code, including many multi-word phrases. Only one multi-word phrase (“from datetime import datetime”) was located in the Zurich code, but that phrase is directly related to Python functionality, *see* <https://stackoverflow.com/questions/15707532/import-datetime-v-s-from-datetime-import-datetime> (3/29/2013; last visited 4/25/2022).

ANSWER: PalCare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 and, on that basis, denies those allegations.

16. Thus, the Asserted Code and the Zurich Code are not substantially similar.

ANSWER: Denied.

17. Further, Defendants have not undertaken any actionable conduct, as indicated above in at least Affirmative Defenses 14-18.

ANSWER: Denied.

18. Accordingly, Defendants seek a declaration of rights as between them and Plaintiff regarding the invalidity of Plaintiff's purported copyright rights and their noninfringement of same.

ANSWER: PalCare admits that Defendants seek a declaration of rights as between them and PalCare. PalCare denies the remaining allegations in Paragraph 18.

DEFENDANTS' PRAYER FOR RELIEF

PalCare denies that Defendants are entitled to any of the relief they seek.

AFFIRMATIVE DEFENSES

1. Defendants fail to state a claim upon which relief can be granted.
2. Defendants' Counterclaims are superfluous and duplicative of the claims in PalCare's Complaint, and the Court should decline to exercise jurisdiction under 28 U.S.C. § 2201(a).

PalCare has not knowingly or intentionally waived any applicable defenses and reserves the right to assert and rely upon such other affirmative defenses as may become available or apparent during discovery proceedings. PalCare further reserves the right to amend its answer and/or affirmative defenses accordingly.

WHEREFORE, PalCare respectfully requests judgment dismissing Defendants' Counterclaims in their entirety with prejudice and awarding PalCare its attorneys' fees and costs, as allowed by law, and such other and further relief as the Court deems just and proper.

PalCare demands a trial by jury on all claims and issues so triable.

Dated this 16th day of May, 2022.

GODFREY & KAHN, S.C.

By: /s/ Brian C. Spahn

Brian C. Spahn
State Bar No. 1060080
Daniel T. Flaherty
State Bar No. 1011357

Attorneys for Plaintiff PalatiumCare, Inc.

P.O. ADDRESS:

Godfrey & Kahn, S.C.
833 East Michigan Street, Suite 1800
Milwaukee, WI 53202
Phone: 414-273-3500
Fax: 414-273-5198
Email: bspahn@gklaw.com
dflaherty@gklaw.com

OF COUNSEL:

Brett Schuman
Goodwin Procter LLP
Three Embarcadero Center, 28th Floor
San Francisco, CA 94111
Phone: 415-733-6021
bschuman@goodwinlaw.com

Jennifer Burns Luz
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Phone: 617-570-1764
jluz@goodwinlaw.com

Andrew Ong
Goodwin Procter LLP
601 Marshall Street
Redwood City, CA 94063
Phone: 650-752-3153
aong@goodwinlaw.com
27204134.1